IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 291 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

MAHENDRAKUMAR VINAYAKLAL SUTARIA

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioner

MR AJ DESAI APP for Respondent No. 1, 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 07/07/2000

C.A.V. JUDGEMENT

This petition under Articles 226 and 227 of the Constitution of India prays for a writ restraining the investigation of the case registered as Crime Register No.397 of 1988 at Karanj Police Station, Ahmedabad on the

basis of the complaint filed by one Shri N.M.Saiyed.

2. The short facts of the case are that the petitioner had decided to purchase a property and prepared a sale deed on stamp paper but subsequently agreed to have the sale deed executed in favour of a third person. Therefore, after necessary corrections, the sale deed was presented in the office of the Sub-Registrar for registering the same. Afterwards, the petitioner came to know that one N.M.Saiyed from the office of the Sub-Registrar, Ahmedabad was directed to file a complaint in respect of the registration of the document alleging that an offence under Section 477-A of the Indian Penal Code was committed in respect of the document. The complaint so filed was registered as F.I.R. of a cognizable offence under Section 154 of the Code of Criminal Procedure. Registering the same as C.R. No.397 of 1988, the investigating officer started investigation and the petitioner was called by the investigating officer in the course of his investigation. Being aggrieved by the investigation and apprehending his implication, the petitioner has approached this Court contending that the action of the police officer in registering the F.I.R. was absolutely illegal, unwarranted and unjustified.

2. It is pointed out that under the provisions of the Code of Criminal Procedure, the offence punishable under Section 477-A is a non-cognizable offence and, therefore, a complaint thereof cannot be treated as a F.I.R. under Section 154 of the Cr.P.C. It is submitted that the information given to the officer in charge of the police station could have been dealt with under Section 155 but no police officer could legally investigate into such case without the order of the Magistrate. In the instant case, admittedly, the police officer has committed a serious error in registering the offence as a cognizable one and even started investigation without the authority of law.

3. The learned counsel for the petitioner has relied upon the settled legal principles enunciated by the Hon'ble Supreme Court in AIR 1992 SC 604 (STATE OF HARYANA v. BHAJAN LAL). The F.I.R. in the present case expressly alleges the offence under Section 477-A of the IPC as a cognizable offence which is not a cognizable offence under the Cr.P.C. In such circumstances, the allegations in the F.I.R., at best, disclose a non-cognizable offence and investigation into it is not permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the

Cr.P.C. The learned Additional Public Prosecutor has not seriously disputed the factual and legal position. Therefore, this is a fit case in which interference in the proceedings to prevent abuse of the process of law is called for and justified.

4. In the result, the petition is allowed and the investigating officer of Karanj Police Station, Ahmedabad is restrained from carrying on any investigation in respect of the F.I.R. registered as C.R. No.397 of 1988 without the order of a Magistrate under Section 155 of the Cr.P.C. No order as to costs.

Sd/-

(KMG Thilake)

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